

Nos. PD-0108-20 & PD-109-20
IN THE COURT OF CRIMINAL APPEALS OF TEXAS

ON REVIEW FROM THE COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS AT BEAUMONT
Nos. 09-18-00218-CR & 09-18-006-00219-CR

FILED
3/24/2022
DEANA WILLIAMSON, CLERK

BRADLEY JACOB SHUMWAY

V.

THE STATE OF TEXAS

Arising from: Cause Nos. 17-10-12127 & 17-12-15229
IN THE DISTRICT COURT FOR THE
435TH JUDICIAL DISTRICT, MONTGOMERY COUNTY, TEXAS

**STATE'S RESPONSE TO
APPELLANT'S MOTION FOR REHEARING**

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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

In his motion for rehearing, the appellant argues for the first time that retroactive application of the Court's newly recognized exception to the corpus delicti rule violates his right to due process, citing *Bouie v. City of Columbia*, 378 U.S. 347 (1964), and *Rogers v. Tennessee*, 532 U.S. 451 (2001).

In *Bouie*, the Supreme Court of the United States held that a defendant's right to due process was violated when a state appellate court engaged in an "unforeseeable and retroactive judicial expansion of narrow and precise statutory language" defining a criminal offense. *Bouie*, 378 U.S. at 352. And in *Rogers*, the Court applied *Bouie* in the context of an appellate court's alteration of a common-law principal of criminal law, but held that the retroactive application of that alteration violates due process principles only when it is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue." *Rogers*, 532 U.S. at 462 (quoting *Bouie*, 378 U.S. at 354).

It is unnecessary for this Court to grant the appellant's motion for rehearing in order to address the due process implications of its decision, because the Court has already determined in *Miller v. State*, 457 S.W.3d 919 (2015), that retroactive application of a newly recognized exception to the corpus delicti rule does not violate the right to due process upon which *Bouie* was based.

In *Miller*, the State requested that this Court join those appellate courts which have abrogated the common-law corpus delicti rule. The Court declined that request, but carved out a previously unrecognized exception to the rule for offenses closely related to an offense for which there existed independent proof of the corpus delicti. *Id.* at 927.

The defendant in *Miller* argued on original submission—rather than in a motion for rehearing—that due process considerations precluded retroactive application of any potential abrogation of the corpus delicti rule. *Id.* at 927 n.12. This Court therefore considered whether the newly-recognized exception to that rule could be applied retroactively under *Rogers*, and concluded that its ruling was “not so unexpected and indefensible” that affirming the defendant’s conviction would violate his right to due process of law:

We conclude that our decision today is not so unexpected and indefensible, based on the applicable law at the time of Appellant’s conduct, that retroactive application of our decision would violate his right to due process of law. Instead, we believe that our decision is “a routine exercise of common law decision making in which [we] brought the law into conformity with reason and common sense.” When examining the practices of jurisdictions throughout the nation, it is clear that the continuing usefulness of the traditional corpus delicti rule has been questioned for some time. As we have explained, a number of courts have abolished the rule in favor of a trustworthiness standard, including the United States Supreme Court in the 1960s. Other jurisdictions have recognized that increased flexibility was necessary because of concerns regarding unintended consequences of the rule and due to erosion over time of some of the policy reasons for the rule. In addition, while the Tennessee Supreme Court in *Rogers* abolished the “year and a day rule,” our decision today limits only strict application

of the corpus delicti rule when a specific fact pattern is presented. We also note that our research reveals no Texas case in which relief was granted because, although a defendant confessed to multiple crimes, the State could establish the corpus delicti of only one offense . . .

Id. at 928–29 (quoting *Rogers*, 532 U.S. at 437).

The Court’s rationale for retroactive application of its decision in *Miller* applies to this case as well. *Miller* was decided on April 15, 2015, well before the appellant committed his sordid crimes in August of 2016. *See Shumway v. State*, No. PD-0108-20, 2022 WL 301737, at *2 (Tex. Crim. App. Feb. 2, 2022). At the time of the appellant’s offenses, this Court had already identified a newly-recognized exception to the state’s common-law corpus delicti rule, and the recognition of an additional exception is in no way “unexpected and indefensible” in light of the pre-existing jurisprudence of the State.

CONCLUSION AND PRAYER

The State respectfully requests that this Court deny the appellant's motion for rehearing.

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CERTIFICATE OF COMPLIANCE WITH RULE 9.4

I hereby certify that this document complies with the requirements of Tex. R. App. P. 9.4 (i)(2)(D) because there are 988 words in this document, as calculated by the Microsoft Word computer program used to prepare it.

/s/ William J. Delmore III
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served electronically upon counsel for the appellant and upon the office of the State Prosecuting Attorney on the date of the submission of the original to the Clerk of this Court.

/s/ William J. Delmore III
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